


Atty. Docket No. GEN10 P-397

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Rebecca A. Westers

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 2632
Examiner : Nina C. Tong
Applicant : Robert R. Turnbull et al.
Appln. No. : 09/827,304
Filing Date : April 5, 2001
Confirmation No. : 4135
For : VEHICLE REARVIEW MIRROR ASSEMBLY
INCORPORATING A COMMUNICATION SYSTEM

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

RESPONSE TO RESTRICTION REQUIREMENT

This is a response to the Office Action mailed May 3, 2004. In the Office Action, the Examiner set forth a requirement for election of species.

Applicants hereby elect Species I, Species B, Species 2B, and Species 6, with traverse. Applicants acknowledge that claim 116 is generic to all of the identified species.

The Examiner identifies Species I as "A rearview mirror assembly with a mounting structure housing an audio/data signals transceiver to wirelessly communicate with a portable device to control the device associated with the vehicle" while referencing Fig. 11. Species II is identified as "A rearview mirror assembly with a mounting structure housing the pushbutton for manually controlling the device associated with the vehicle," while referencing Figs. 11 and 12. Applicants respectfully submit that this requirement for election of species is improper for the reasons set forth below.

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Applicants note that each of the independent claims (claims 116, 307, and 312) recites the inclusion of an audio and data transceiver. Because the Examiner has identified Species I as "A rearview mirror assembly with a mounting structure housing an audio/data signals transceiver," it is apparent that all of the pending claims belong to Species I thereby obviating the need for any election of species between Species I and II in the first place.

Applicants further submit that at least independent claims 116, 307, and 312 are generic with respect to all of the remaining species.

MPEP §804.04(f) sets forth the requirements for making a proper restriction based on species. Specifically, MPEP §804.04(f) states:

Claims to be restricted to different species *must be mutually exclusive*. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that the claims to be restricted to different species, must recite the mutually exclusive characteristics of such species.

Applicants respectfully submit that the alleged Species I and Species II do not include claims that recite mutually exclusive characteristics of the invention. The fact that Fig. 11 shows a single embodiment that includes pushbutton switches (130) used in conjunction with an audio/data signal transceiver (185) is evidence itself that the two features identified by the Examiner as defining these species are not mutually exclusive, but rather may be used together in a single embodiment. It is clear that Species I and II, as defined by the Examiner, are not mutually exclusive and are not properly subject to a requirement for election of species. Because all of the remaining requirements for election of species are contingent upon there being a Species I in the first instance, Applicants submit that all of the remaining requirements for election of species are also improper and should be withdrawn.

In any event, Applicants further note that with respect to the requirement for election of species between Species A and Species B, it is not clear that there are any claims that are directed to either of these particular species to the exclusion of the other. Accordingly, Applicants request the Examiner to identify which claims would be subject to this election of species.

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With respect to the requirement for election between Species 2A through 2E, Applicants note that the Examiner refers to Figs. 11-13 for each of the species, which clearly indicates that all of these features defining these species may be used in a single embodiment and are thus not mutually exclusive of one another. Applicants further point out that the specification clearly recites that all of these features may be used in a single embodiment.

With respect to the requirement for election between Species 1-7, Applicants again note that the Examiner refers to Figs. 11-13 for each of the identified species. Again, all of these features of Species 1-7 may be used in a single embodiment, as evidenced by Figs. 11-13, and thus do not define mutually exclusive characteristics of the invention. Accordingly, this requirement for election of species should also be withdrawn.

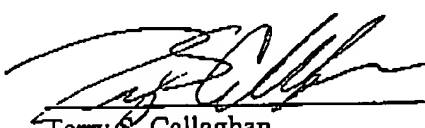
In view of the foregoing remarks, Applicants submit that the various requirements for election of species are improper and should be withdrawn. An Office Action indicating that all of the claims have been examined is hereby respectfully solicited.

Respectfully submitted,

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